Parties to the main proceedings

Applicant: Municipality of Agios Nikolaos, Crete

Defendant: Minister for Rural Development and Food

Question referred

1. Do the definitions of forest and wooded land in Article 3(a) and (b) of Regulation (EC) No 2152/2003 apply to matters of protection and management, in general, of forest and wooded land as defined above, which are not expressly governed by the Regulation, but for which provision is made in the national legal order?

2. If the answer to question 1 is in the affirmative, may the national legal order also define as forest or wooded land land that is not forests or wooded land under the definitions given in Article 3(a) and (b) of Regulation (EC) No 2152/2003?

3. If the answer to question 2 is in the affirmative, can the definition that may be given by the national legal order of forests and wooded land to include land that does not constitute forest or wooded land under the definitions in Article 3(a) and (b) of Regulation (EC) No 2152/2003 differ from the definition in the above Regulation both as to the constituent elements included in the definition of forest or wooded land by the Regulation and as to the numerical determination of the dimensions of those elements that may be in common with the Regulation?

   Alternatively can that definition under the national legal order include constituent elements of the definition of forest or wooded land that are different from those included in the Regulation's definition, but as to elements that it has in common with the Regulation its being permissible not to determine them numerically; if it does determine them numerically though, is it precluded from deviating from that (numerical determination) under the Regulation?

Appeal brought on 25 February 2009 by the Commission of the European Communities against the judgment delivered by the Court of First Instance (Seventh Chamber) on 10 December 2008 in Case T-388/02 Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG v Commission of the European Communities, supported by Zellstoff Stendal GmbH, Federal Republic of Germany and Land Sachsen-Anhalt

(Case C-83/09 P)

(2009/C 102/25)

Language of the case: German

Parties

Appellant: Commission of the European Communities (represented by: K. Gross and V. Kreuschitz, Agents)

Other parties to the proceedings: Kronoply GmbH & Co. KG, Kronotex GmbH & Co. KG, Zellstoff Stendal GmbH, Federal Republic of Germany and Land Sachsen-Anhalt

Form of order sought

— Set aside the judgment under appeal in so far as it declares admissible the action for annulment brought by Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG against the Commission's decision of 19 June 2002 to raise no objections to aid granted by Germany in favour of Zellstoff Stendal GmbH for the construction of a production plant for pulp;

— dismiss as inadmissible the action for annulment brought by Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG against the contested act;

— order Kronoply GmbH & Co. KG and Kronotex GmbH & Co. KG to pay the costs.

Pleas in law and main arguments

In the Commission's view, the establishment of a right of action against decisions on aid in favour of parties concerned within the meaning of Article 88(2) EC infringes the requirements laid down in the fourth paragraph of Article 230 EC as to the admissibility of actions. Parties concerned who are not parties to the aid procedure do not have their own party rights, enforceable by bringing proceedings. Instead, individual concern is to be determined on the basis of the Court's *Plaumann* formula. Individual concern can, therefore, arise only by virtue of the economic impact of the aid on the applicant.

In addition, the judgment under appeal includes an inadmissible reinterpretation of the forms of order sought. In the Commission's opinion, the Court examined arguments put forward by the applicant which were not put forward in regard to the protection of the applicant's alleged procedural rights, even though the action was admissible only for the purposes of protecting the alleged procedural rights.

The judgment under appeal would ultimately lead to the introduction of a popular action against State aid law decisions which is extraneous to Community law.

Appeal brought on 27 February 2009 by Portela — Comércio de artigos ortopédicos e hospitalares, L[da] against the order made by the Court of First Instance on 17 December 2008 in Case T-137/07 Portela — Comércio de artigos ortopédicos e hospitalares, L[da] v Commission of the European Communities

(Case C-85/09 P)

(2009/C 102/26)

Language of the case: Portuguese

Parties

Appellant: Portela — Comércio de artigos ortopédicos e hospitalares, L[da] (represented by C. Mourato, advogado)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— set aside, in part, the order under appeal in so far as it considered that no causal connection had been established between the Commission's failure to act and the damage allegedly sustained (paragraphs 96, 97, 99, 100 and 101 of the order under appeal) by the appellant;

and, ruling on the merits,

— declare, primarily, that in this case the conditions necessary for the Commission to incur non-contractual liability have been satisfied; order the Commission to pay compensation for the damage alleged, and order the Commission to pay all the costs at both instances, including the appellant's;

— or, refer the case back to the Court of First Instance for it to ascertain whether the conditions necessary for the Commission to incur non-contractual liability have been satisfied; order the Commission to pay compensation for the damage alleged, and order the Commission to pay the costs — including the appellant's — of these proceedings and of those before the Court of First Instance.

Pleas in law and main arguments

— The order under appeal is insufficiently reasoned, for the Court of First Instance has not answered the arguments raised by the appellant, in paragraphs 92 and 93 of the original application, to the effect that the fact that the manufacturer had no authorised representative for Community territory, as required by the directive, rendered impossible the conformity assessment procedure carried out by the notified body and, lastly, concerning the Commission's assertion that it had not been called upon to take part in the safeguard procedure because the Portuguese authority Infarmed had failed to act in accordance with Article 14b of Council Directive 93/42/EC [1] of 14 June 1993 concerning medical devices, as amended by Directive 98/79/EC [2] of the European Parliament and of the Council of 27 October 1998 on *in vitro* diagnostic medical devices;

— error in the assessment of the causal connection between the Commission's conduct and the damage suffered by the appellant and misinterpretation of Articles 8 and 14b of the Directive by the Court of First Instance;

— infringement of the right to a fair hearing by refusing the measures of inquiry sought by the appellant.

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[1] OJ 1993 L 169, p. 1.
[2] OJ 1998 L 331, p. 1.

Reference for a preliminary ruling from VAT and Duties Tribunal, Manchester (United Kingdom) made on 27 February 2009 — Future Health Technologies Ltd v Her Majesty's Commissioners of Revenue and Customs

(Case C-86/09)

(2009/C 102/27)

Language of the case: English

Referring court

VAT and Duties Tribunal, Manchester

Parties to the main proceedings

Applicant: Future Health Technologies Ltd

Defendant: Her Majesty's Commissioners of Revenue and Customs